THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.20950 of 2006

26.7.2007

Between:

Smt.Sanniboena Koteswaramma, W/o.Late Subbaiah
And others

… Petitioners

AND

State of Andhra Pradesh represented by its Principal Secretary, Panchayat Raj and Rural Development, Saifabad, Hyderabad
And another

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.20950 of 2006

ORDER:

Five petitioners are residents of Ulavapadu in Prakasam District. They filed the instant writ petition aggrieved by the proceedings dated 26.9.2006 issued by the second respondent informing them that the encroachments made by the petitioners in survey No.96 classified as Pappyi kunta (water body), shall be removed and directing the petitioners to vacate the land. They seek a declaration that the impugned proceedings is illegal, arbitrary and contrary to the provisions of Andhra Pradesh Pranchayat Raj Act, 1994 (the Act, for brevity).

Petitioners allege that their forefathers occupied various extents of land ranging from Acs.0.04 to Acs.0.05 and petitioners are houseless poor agricultural labourers in occupation of the same. The husband of the first petitioner was granted assignment by the Mandal Revenue Officer (MRO) by proceedings dated 16.9.1997 and the house constructed by her is also assessed to panchayat tax. It is also alleged that in the same survey number, Ulavapadu Primary Agricultural Cooperative Credit Society constructed a building and Papayi kunta is not in use now. Therefore, according to the petitioners, there cannot be any objection for their occupation or construction of houses in the land classified as Papayi kunta. The impugned order was issued by the second respondent purportedly as directed by Hon'ble Lok Ayuktha and that no notice was issued to the petitioners before directing them to vacate the land.

The second respondent filed counter affidavit along with WVMP No.703 of 2007 and as the question involved is short, the matter itself is heard finally.

In the counter affidavit, it is stated that Papayi kunta vests in

Ulavapadu Gram Panchayat. The husband of the first petitioner was granted assignment in respect of Acs.0.05 and petitioners 2 to 5 are encroachers. A ward member of the Gram Panchayat, Smt.Rajaswari, filed an application before Hom'ble Lok Ayuktha alleging encroachments. By order dated 30.1.2006, Hon'ble Lok Ayuktha directed the District Collector, Prakasam District, and the MRO to take steps to remove the encroachments. The District Collector, in turn, issued proceedings on 28.2.2006 directing the MRO to get survey the land in survey No.96 and remove the encroachments. It is further alleged that the Gram Panchayat passed resolution No.41, dated 01.10.2004, resolving to get the encroached land surveyed and remove the encroachments. Pursuant to the same, by letter dated 27.3.2005, Panchayat Secretary requested the Mandal Surveyor to survey the land and fix boundaries. During the survey, it was identified that the land was encroached by 24 persons. Therefore, in obedience to the directions of the District Collector and the MRO, the Gram Panchayat issued notice of eviction under Section 103(3) of the Act.

Learned Counsel for the petitioners submits that the petitioners are in occupation of the land in survey No.96, which is a defunct water tank, and therefore there cannot be any objection for their occupation. Secondly, he submits that as the petitioners are in occupation of the land since long ago, issue of notice at this point of time is unsustainable and that the Gram Panchayat has no jurisdiction to issue such notice. Lastly he submits apart from the constructions raised by the petitioners, Ulavapadu Primary Agricultural Cooperative Credit Society also constructed office building and therefore the impugned order is illegal and arbitrary. These contentions are refuted by the learned Standing Counsel for the Gram Pancnayat.

A perusal of the impugned order issued by the second respondent would show that the petitioners encroached Papayi kunta and raised constructions. This is not denied. The Panchayat Secretary, however, admits that the first petitioner's husband was assigned Acs.0.05 of land and, therefore, her occupation cannot be illegal. Insofar as the encroachments made by the petitioners 2 to 5 is concerned, the allegation that they are encroachers, is not denied by the petitioners by filing reply affidavit and, therefore, if any action is to be taken for eviction of petitioners 2 to 5, it should be in accordance with law.

The Supreme Court as well as this Court have repeated held that, "so as to maintain ecological balance and people-friendly environment, State should protect water bodies and should not be allowed to be used for other purposes". A reference may be made to

Intellectuals Forum, Tirupathi v State of A.P.[1] wherein considering the competing claims for good environment and for shelter, the Supreme Court laid as under.

> It is true that the tank is a communal property and the State authorities are trustees to hold and manage such properties for the benefits of the community and they cannot be allowed to commit any act or omission which will infringe the right of the Community and alienate the property to any other person or body.
>
> Taking into account all these principles of law, and after considering the competing claims of environment and the need for housing, this Court holds the following as per the facts of this case:
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> The respondents have claimed that the valuable right to shelter will be violated if the impugned government orders are revoked. On the facts of the present case, it seems that the respondents intend to build residential blocks of flats for high and middle-income families, institutions as well as infrastructure for TTD. If the proposed constructions are not carried on, it seems unlikely that anyone will be left homeless or without their basic need for shelter. Therefore, one feels that the right to shelter does not seem to be so pressing under the present circumstances so as to outweigh all environmental considerations.

In view of the above, this Court is not able to countenance the submission that even if the Gram Panchayat takes steps for protecting Papayi kunta, the existing construction made by the petitioners need not be removed. This is a matter to be considered by the Gram Panchayat whether the petitioners were asked to remove the encroachments or not. By reason of the interim order dated 09.10.2006 passed by this Court, petitioners were not removed. Therefore, liberty is given to petitioners to approach the Gram Panchayat and submit their explanations, which should be considered by the Gram Panchayat before initiating any further action. Petitioners' request for continuance in the land in survey No.96 is rejected. They are given liberty to prefer appeal before the District Panchayat Officer concerned. Till the representations/explanations by the petitioners are considered by the Gram Panchayat, no coercive action shall be taken against them.

The writ petition, with the above observations and directions, is accordingly disposed of. No costs.

(**V.V.S.RAO, J**)

July 26, 2007.
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[1] (2006) 3 SCC 549